

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LIBERTY MUTUAL FIRE
INSURANCE COMPANY, a
Wisconsin insurance company,

Plaintiff,

v.

SCI INFRASTRUCTURE, LLC, a
Washington limited liability company,
et al.,

Defendants.

CASE NO. 3:20-cv-06084-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Defendants' Motion to Stay. Dkt. # 36. Plaintiff opposes the motion. Dkt. # 40. For the reasons below, the Court **DENIES** the motion.

II. BACKGROUND

Plaintiff Liberty Mutual Fire Insurance Company ("Liberty" or "Plaintiff") filed suit in this Court for declaratory judgment against Defendants SCI Infrastructure, LLC ("SCII"), Black Rock Resources, Inc. ("BRR"), Aztec Equipment Company, Inc.

1 (“Aztec”), Scoccolo Construction, Inc. (“SC”), Pinnacle Crushing & Construction, LLC
2 (“Pinnacle”), Patrick Scoccolo (“Patrick”), Mark Scoccolo (“Mark”), Black Lake Quarry,
3 LLC (“BLQ”), and Black Lake Resources, Inc. (“BLR”), (collectively “Defendants”).

4 Dkt. # 1. This action arises out of an underlying dispute involving a gravel mining
5 operation. *Id.* ¶ 3.2. The Court will summarize the facts of the dispute as relevant here.

6 On January 13, 2017, BLQ, which owned three gravel pits and leased a fourth
7 (collectively, the “Properties”) entered into a Mining Materials Processing and Operating
8 Agreement (the “Agreement”) with BRR, which is owned by Mark and Patrick Scoccolo.
9 *Id.* ¶ 3.4. BLQ and BRR formed a third entity, BLR, as a signatory to the Agreement,
10 which contracted with other entities, including SCII, Aztec, and Pinnacle, to perform
11 gravel mining activities pursuant to the Agreement. *Id.* ¶¶ 3.6-3.7. On August 24, 2018,
12 BLQ’s owner sent the Scoccolos a “Notice of Default” claiming that BRR breached the
13 Agreement “by abandoning the project, recording and/or allowing other affiliated entities
14 to record liens against the Properties, and failing to make the required payments,” among
15 other claims giving rise to tort liability. *Id.* ¶ 3.9-3.11. The Notice of Default stated that
16 “[t]hese and other torts may be subject to coverage under BRR’s CGL policy, as
17 advertising injuries to BLQ, and BLQ demands that BRR tender this notice of default and
18 these claims to its CGL carrier, and demand defense and indemnity.” *Id.* ¶ 3.14.

19 On March 7, 2019, BLQ filed a complaint in Washington State Superior Court in
20 Thurston County No. 19-2-01233-34 (the “Underlying Action”), naming BRR, Patrick,
21 and Mark as defendants. Dkt. # 1 ¶¶ 3.15-3.16. The complaint alleged that BRR
22 committed “tortious acts” including waste, trespass, and conversion by dumping
23 materials on the Properties and by removing materials from the Properties without
24 authority. *Id.* ¶ 3.17. The complaint alleged that BRR interfered with BLQ’s pending
25 sale of the Properties by asserting rights to the Properties that it did not have, recording
26 liens, and communicating its assertion of rights to the prospective buyer. *Id.* ¶ 3.19. The
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1 complaint also alleged that Patrick and Mark had “misrepresented material facts to
2 BLQ.” *Id.* ¶ 3.20. On March 26, 2019, BLQ filed an amended complaint adding BLR as
3 a plaintiff and adding SCI, SCII, Aztec, and Pinnacle as defendants. *Id.* ¶ 3.21-3.22.

4 Less than a week later, on April 1, 2019, Liberty issued a commercial general
5 liability policy for SCII for the policy period from April 1, 2019 to April 1, 2020 (the
6 “Policy”). *Id.* ¶ 3.26. The Policy included Aztec, BRR, and SCI, among other entities, as
7 additional named insureds. *Id.* ¶ 3.27. The Policy contained two coverage plans:
8 Coverage A – Bodily Injury and Property Damage Liability; and Coverage B – Personal
9 and Advertising Injury. *Id.* ¶ 3.28.

10 On November 6, 2019, BLQ filed a second amended complaint re-alleging the
11 substantive allegations set forth in the prior complaints and adding new allegations
12 regarding additional liens recorded against the Properties. *Id.* ¶ 3.30-3.32. SCII tendered
13 the defense of the second amended complaint to Liberty pursuant to the Policy. *Id.*
14 ¶ 3.33. Liberty agreed to provide a defense “subject to a full reservation of rights,
15 including the right to file a declaratory judgment action, seek an order allowing it to
16 withdraw from the defense being provided, and to seek allocation and/or reimbursement
17 of defense costs.” *Id.* ¶ 3.34.

18 On November 4, 2020, Liberty filed a complaint in this Court with two counts. *Id.*
19 The first count seeks “[d]eclaratory relief pursuant to the Declaratory Judgments Act, 28,
20 U.S.C. § 2201, that Liberty has no duty to defend or indemnify the Underlying
21 Defendants in the Underlying Action” and “that Liberty may withdraw from the defense
22 currently being provided in the Underlying [A]ction.” *Id.* at 14. The second count seeks
23 “an order declaring that Liberty is entitled to recoup from the Underlying Defendants the
24 costs incurred in providing a defense under a reservation of rights” and such relief as
25 deemed just and appropriate by the Court. *Id.* at 14. Liberty later voluntarily dismissed
26 its claims against Defendants BLQ and BLR without prejudice. Dkt. # 14. Defendants
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1 filed an answer to the complaint and counterclaim alleging that Liberty acted in bad faith
 2 “by attempting to litigate facts that are at issue in the Underlying Action.” Dkt. # 16 at
 3 15.

4 On May 19, 2021, Defendants filed the pending motion to stay. Dkt. # 36. The
 5 next day, Liberty filed a motion for partial summary judgment on its first cause of action
 6 and seeking an order declaring that “Liberty has no duty to defend or indemnify the
 7 [Defendants] in the Underlying Action and that it may withdraw the defense currently
 8 being provided.” Dkt. # 38 at 30. In its response to Defendants’ motion to stay, Liberty
 9 stipulated to a stay of this action “solely with respect to those coverage defenses that are
 10 set forth in Count I¹ of its Complaint and which are not addressed in its Motion for Partial
 11 Summary Judgment.” Dkt. # 40 at 4. Liberty contends that because the Court can
 12 “resolve coverage without finding any facts of consequence to the underlying state court
 13 lawsuit, Defendants’ claim of prejudice is without merit.” *Id.*

14 III. DISCUSSION

15 A district court “has broad discretion to stay proceedings as an incident to its
 16 power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997). The
 17 moving party bears the burden of establishing that a stay is necessary. *Id.* at 708.

18 This matter involves the Declaratory Judgments Act, 28 U.S.C. § 2201, under
 19 which a federal court “may declare the rights and other legal relations of any interested
 20 party seeking such declaration, whether or not further relief is or could be sought.”
 21 Although the Court “has jurisdiction of the suit under the Federal Declaratory Judgments
 22 Act . . . it [is] under no compulsion to exercise that jurisdiction.” *Brillhart v. Excess Ins.*
 23 *Co. of Am.*, 316 U.S. 491, 494 (1942). The Supreme Court in *Brillhart* held that in a
 24 situation in which another proceeding was pending in state court in which the matters at
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26 ¹ Liberty noted that it does not agree to stay its request for reimbursement under Count II.
 27 Dkt. # 40 at 4.

1 issue before the federal court could be fully adjudicated, “a declaratory judgment in the
2 federal court was unwarranted.” *Id.* at 495. The Supreme Court explained its reasoning
3 accordingly:

4 Ordinarily it would be uneconomical as well as vexatious for a federal court to
5 proceed in a declaratory judgment suit where another suit is pending in a state
6 court presenting the same issues, not governed by federal law, between the same
7 parties. Gratuitous interference with the orderly and comprehensive disposition of
8 a state court litigation should be avoided.

8 *Id.* at 495.

9 Over fifty years later, the Supreme Court reinforced the “unique and substantial
10 discretion [of district courts] in deciding whether to declare the rights of litigants” under
11 the Declaratory Judgments Act. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). In
12 *Wilton*, the Court concluded that the district court had acted properly when it stayed an
13 action for declaratory relief “when parallel proceedings, presenting opportunity for
14 ventilation of the same state law issues, were underway in state court.” *Id.* at 290.

15 In determining whether to exercise its discretion to retain jurisdiction over such a
16 declaratory judgment action, a district court should “ascertain whether the questions in
17 controversy between the parties to the federal suit, and which are not foreclosed under the
18 applicable substantive law, can better be settled in the proceeding pending in the state
19 court.” *Brillhart*, 316 U.S. at 495. This evaluation, the Supreme Court explained, may
20 involve an inquiry as to the scope of the pending state court claims, the nature of
21 defenses, and whether the claims of all parties can be adjudicated satisfactorily in the
22 state proceeding. *Id.* Specifically, a district court’s exercise of discretion should be
23 guided by three factors: (1) the court should avoid unnecessary determination of state
24 issues; (2) it should discourage the filing of declaratory actions as a means of forum
25 shopping; and (3) it should not engage in duplicative litigation. *Am. Cas. Co. of Reading,*
26 *Pennsylvania v. Krieger*, 181 F.3d 1113, 1118 (9th Cir. 1999) (internal citation omitted).

1 Here, Defendants move the Court to exercise its discretion to stay this action until
2 factual determinations have been made in the Underlying Action in line with the
3 *Brillhart-Wilton* doctrine. Dkt. # 36 at 2. The Court finds that such a stay is
4 unwarranted.

5 With respect to the first factor, the Court finds that it need not engage in
6 unnecessary determination of state issues. The question of whether the Policy covers the
7 Defendants for the alleged actions and damages in the Underlying Action is not before
8 the state court. Dkt. # 40 at 8. *See Krieger*, 181 F.3d at 1119 (holding that “[b]ecause the
9 state court case did not include the coverage issue, and because the coverage issue in the
10 federal action was not contingent on any further state court proceedings, the district court
11 found good cause to continue to exercise its jurisdiction”). Indeed, the legal issues before
12 the state court are distinct from the declaratory judgment sought here. As Liberty
13 correctly notes, the issues before the state court involve whether Defendants engaged in
14 the alleged conduct, and if so, whether they are liable to BLR based on that conduct.
15 Dkt. # 40 at 10. The issues before this Court, on the other hand, are whether the Policy
16 covers Defendants, assuming that the allegations are true, and whether the Defendants
17 had knowledge of the allegations before the Policy went into effect. *Id.* Based on the
18 distinct legal issues before this Court and the state court, this Court’s analysis will not
19 involve a “needless determination of state law issues.” *Id.* This weighs against a stay.

20 With respect to the second factor, there is no evidence of forum-shopping, and
21 Defendants do not make an argument to the contrary. In their reply brief, they merely
22 note that a stay may be appropriate even in the absence of forum-shopping. Dkt. # 41 at
23 7 n.3 (citing *N. Pac. Seafoods, Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, C06-
24 795RSM, 2008 WL 53180, at *4 (W.D. Wash. Jan. 3, 2008)). Absent evidence of forum-
25 shopping, this factor leans slightly against a stay.

1 Finally, with respect to the third factor, the Court finds that a stay is not warranted
2 to avoid duplicative litigation. Indeed, as already discussed, the legal issues before this
3 court in the declaratory action are distinct from those before the state court. Moreover,
4 the Defendants' bad faith counterclaim adds another claim that is not before the state
5 court—and which does not fall under the Declaratory Judgments Act—that requires this
6 Court to exercise jurisdiction. The federal court action, therefore, is not duplicative of
7 the state court action. This factor weights against a stay.

8 Based on the foregoing analysis, the Court hereby finds that the *Brillhart* factors
9 do not weigh in favor of a stay here.

10 IV. CONCLUSION

11 For the reasons above, Defendant's Motion for Stay is **DENIED**. Dkt. # 36.

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13 DATED this 2nd day of August, 2021.

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17 The Honorable Richard A. Jones
18 United States District Judge
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